

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PLANNING AND ZONING LAWS;
5 REMOVING A REQUIREMENT TO INCLUDE INFORMATION RELATED TO A WILDLAND-URBAN
6 INTERFACE IN A GROWTH PLAN; REVISING CRITERIA FOR ZONING REGULATIONS; AMENDING
7 SECTIONS 70-17-203, 76-1-601, 76-2-203, 76-2-216, 76-3-503, 76-3-504, 76-3-608, 76-3-621, 76-6-103, AND
8 90-1-103, MCA; AND REPEALING SECTIONS 76-3-509 AND 76-6-102, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 70-17-203, MCA, is amended to read:

13 **"70-17-203. Covenants that run with land.** (1) Except as provided in 70-1-522 and 70-17-212, every
14 covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or
15 some part of the property then in existence runs with the land.

16 (2) Subsection (1) includes:

17 (a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and
18 covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee;

19 (b) conservation easements pursuant to 76-6-209;

20 ~~(c) a dedication of open space as provided in 76-3-509; and~~

21 ~~(d)~~(c) wind easements pursuant to Title 70, chapter 17, part 4.

22 (3) A covenant for the addition of some new thing to real property or for the direct benefit of some part
23 of the property not then in existence or annexed to the property, when contained in a grant of an estate in the
24 property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the
25 covenantee, runs with the land so far as the assigns mentioned are concerned."

26
27 **Section 2.** Section 76-1-601, MCA, is amended to read:

28 **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional

1 area.

2 (2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full
3 discretion of the governing body.

4 (3) A growth policy must include:

5 (a) community goals and objectives;

6 (b) maps and text describing an inventory of the existing characteristics and features of the
7 jurisdictional area, including:

8 (i) land uses;

9 (ii) population;

10 (iii) housing needs;

11 (iv) economic conditions;

12 (v) local services;

13 (vi) public facilities;

14 (vii) natural resources;

15 (viii) sand and gravel resources; and

16 (ix) other characteristics and features proposed by the planning board and adopted by the governing
17 bodies;

18 (c) projected trends for the life of the growth policy for each of the following elements:

19 (i) land use;

20 (ii) population;

21 (iii) housing needs;

22 (iv) economic conditions;

23 (v) local services;

24 (vi) natural resources; and

25 (vii) other elements proposed by the planning board and adopted by the governing bodies;

26 (d) a description of policies, regulations, and other measures to be implemented in order to achieve
27 the goals and objectives established pursuant to subsection (3)(a);

28 (e) a strategy for development, maintenance, and replacement of public infrastructure, including

- 1 drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection
2 facilities, roads, and bridges;
- 3 (f) an implementation strategy that includes:
- 4 (i) a timetable for implementing the growth policy;
- 5 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 6 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
7 necessary;
- 8 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
9 explains:
- 10 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
11 county in which the city or town is located on matters related to the growth policy;
- 12 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities
13 and towns located within the county's boundaries on matters related to the growth policy;
- 14 (h) a statement explaining how the governing bodies will:
- 15 (i) define the criteria in 76-3-608(3)(a); and
- 16 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-
17 608(3)(a);
- 18 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted;
19 and
- 20 (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or
21 not there is a need to:
- 22 ~~(i) delineate the wildland-urban interface; and~~
- 23 ~~(ii) adopt regulations requiring:~~
- 24 ~~(A)(i) defensible space around structures;~~
- 25 ~~(B)(ii) adequate ingress and egress to and from structures and developments to facilitate fire~~
26 suppression activities; and
- 27 ~~(C)(iii) adequate water supply for fire protection.~~
- 28 (4) A growth policy may:

1 (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth
2 policy.

3 (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

4 (c) establish an infrastructure plan that, at a minimum, includes:

5 (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential,
6 commercial, and industrial units over the next 20 years;

7 (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place
8 outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate
9 infrastructure planning with the county or counties where growth is likely to take place;

10 (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities
11 that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

12 (iv) for cities, a land use map showing where projected growth will be guided and at what densities
13 within city boundaries;

14 (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to
15 cities showing where projected growth will be guided and at what densities;

16 (vi) using maps and text, a description of existing and future public facilities necessary to efficiently
17 serve projected development and densities within infrastructure planning areas, including, whenever feasible,
18 extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other
19 municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection
20 (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer
21 systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public
22 access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency
23 services;

24 (vii) a description of proposed land use management techniques and incentives that will be adopted to
25 promote development within cities and in an infrastructure planning area, including land use management
26 techniques and incentives that address issues of housing affordability;

27 (viii) a description of how and where projected development inside municipal boundaries for cities and
28 inside designated joint infrastructure planning areas for cities and counties could adversely impact:

- 1 (A) threatened or endangered wildlife and critical wildlife habitat and corridors;
- 2 (B) water available to agricultural water users and facilities;
- 3 (C) the ability of public facilities, including schools, to safely and efficiently service current residents
- 4 and future growth;
- 5 (D) a local government's ability to provide adequate local services, including but not limited to
- 6 emergency, fire, and police protection;
- 7 (E) the safety of people and property due to threats to public health and safety, including but not
- 8 limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;
- 9 (F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel
- 10 resources, streams, rivers, lakes, wetlands, and ground water; and
- 11 (G) agricultural lands and agricultural production; and
- 12 (ix) a description of measures, including land use management techniques and incentives, that will be
- 13 adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).
- 14 (d) include any elements required by a federal land management agency in order for the governing
- 15 body to establish coordination or cooperating agency status as provided in 76-1-607.
- 16 (5) The planning board may propose and the governing bodies may adopt additional elements of a
- 17 growth policy in order to fulfill the purpose of this chapter."

18
19 **Section 3.** Section 76-2-203, MCA, is amended to read:

20 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- 21 (a) made in accordance with the growth policy; and
- 22 (b) designed to:
 - 23 (i) secure safety from fire and other dangers;
 - 24 (ii) promote public health, public safety, and general welfare; and
 - 25 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other
 - 26 public requirements.
- 27 (2) In the adoption of zoning regulations, the board of county commissioners shall consider:
 - 28 (a) reasonable provision of adequate light and air;

- 1 (b) the effect on motorized and nonmotorized transportation systems;
- 2 (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the
- 3 areas around municipalities;
- 4 (d) the character of the district and its peculiar suitability for particular uses; and
- 5 (e) conserving the value and use of buildings and land and encouraging the most appropriate use of
- 6 land throughout the jurisdictional area.

7 ~~(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of~~
 8 ~~nearby municipalities."~~

9

10 **Section 4.** Section 76-2-216, MCA, is amended to read:

11 **"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel
 12 for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an
 13 allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all
 14 owners of municipal property within 300 feet of the county property of the change of use.

15 (2) Upon request of either the municipality or at least 10% of the property owners in the municipality
 16 who have received the notice, the county governing body shall hold a hearing on the change of use.

17 (3) If the county governing body determines, based on testimony provided at the hearing, that the
 18 regulations in the county district are no longer ~~as compatible as possible~~ with the municipal zoning ordinances
 19 ~~as provided in 76-2-203(3)~~, the county governing body may initiate a revision to the zoning district or
 20 amendments to the regulations as provided in this part."

21

22 **Section 5.** Section 76-3-503, MCA, is amended to read:

23 **"76-3-503. Hearing on proposed regulations.** Before the governing body adopts subdivision
 24 regulations pursuant to 76-3-501 ~~or 76-3-509~~, it shall hold a public hearing on the regulations and shall give
 25 public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time
 26 and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30
 27 days prior to the date of the hearing."

28

1 **Section 6.** Section 76-3-504, MCA, is amended to read:

2 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
3 chapter must, at a minimum:

4 (a) list the materials that must be included in a subdivision application in order for the application to be
5 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

6 (b) except as provided in ~~76-3-509, 76-3-609,~~ 76-3-609 or 76-3-616, require the subdivider to submit
7 to the governing body an environmental assessment as prescribed in 76-3-603;

8 (c) establish procedures consistent with this chapter for the submission and review of subdivision
9 applications and amended applications;

10 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

11 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
12 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
13 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
14 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
15 include building regulations as defined in 50-60-101 other than those identified by the department of labor and
16 industry as provided in 50-60-901.

17 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-
18 year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

19 (g) prescribe standards for:

20 (i) the design and arrangement of lots, streets, and roads;

21 (ii) grading and drainage;

22 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
23 the:

24 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions
25 that will create one or more parcels containing less than 20 acres; and

26 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
27 containing 20 acres or more and less than 160 acres; and

28 (iv) the location and installation of public utilities;

1 (h) provide procedures for the administration of the park and open-space requirements of this
2 chapter;

3 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
4 local, state, and federal government identified during the preapplication consultation conducted pursuant to
5 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency
6 review may not delay the governing body's action on the application beyond the time limits specified in this
7 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of
8 the application by the governing body.

9 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the
10 subdivider to:

11 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
12 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
13 a legal right to the water and reserve and sever any remaining surface water rights from the land;

14 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
15 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
16 administered through a single entity that specifies administration and the rights and responsibilities of
17 landowners within the subdivision who have a legal right and access to the water; or

18 (iii) reserve and sever all surface water rights from the land;

19 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements
20 in the subdivision that:

21 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
22 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
23 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
24 irrigation district or other private or public entity formed to provide for the use of the water right on the
25 subdivision lots;

26 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
27 maintenance, and inspection of the ditch; and

28 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch

1 easement without the written permission of the ditch owner.

2 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

3 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
4 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
5 land and may continue to be assessed for irrigation water delivery even though the water may not be
6 deliverable; or

7 (B) the water rights are removed or the process has been initiated to remove the water rights from the
8 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
9 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
10 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and
11 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

12 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
13 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
14 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
15 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
16 historic and legal rights;

17 (m) require the subdivider to describe, dimension, and show public utility easements in the
18 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient
19 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of
20 public utility services within the subdivision.

21 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
22 hearings;

23 (o) establish procedures describing how the governing body or its agent or agency will address
24 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

25 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
26 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
27 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
28 the reviewing authority is not the governing body.

- 1 (q) establish a preapplication process that:
- 2 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body,
- 3 that is designated by the governing body to review subdivision applications prior to the subdivider submitting
- 4 the application;
- 5 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and
- 6 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;
- 7 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
- 8 state, and federal government, and any other entities that may be contacted for comment on the subdivision
- 9 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If,
- 10 during the review of the application, the agent or agency designated by the governing body contacts a public
- 11 utility, agency, or other entity that was not included on the list originally made available to the subdivider, the
- 12 agent or agency shall notify the subdivider of the contact and the timeframe for response.
- 13 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
- 14 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and
- 15 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;
- 16 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30
- 17 working days following a decision by the governing body to approve, conditionally approve, or deny a
- 18 subdivision;
- 19 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
- 20 spaces for recreational camping vehicles or mobile homes.

21 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
 22 under ~~76-3-509~~ and this section may include provisions that are consistent with this section that promote cluster
 23 development."

24
 25 **Section 7.** Section 76-3-608, MCA, is amended to read:

26 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to
 27 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application,
 28 preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or

1 additional information demonstrates that development of the proposed subdivision meets the requirements of
2 this chapter. A governing body may not deny approval of a proposed subdivision based solely on the
3 subdivision's impacts on educational services or based solely on parcels within the subdivision having been
4 designated as wildland-urban interface parcels under 76-13-145.

5 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as
6 applicable.

7 (3) A subdivision proposal must undergo review for the following primary criteria:

8 (a) except when the governing body has established an exemption pursuant to subsection (6) of this
9 section or except as provided in ~~76-3-509~~, 76-3-609(2) or ~~(4)~~, (4) or 76-3-616, the impact on agriculture,
10 agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public
11 health and safety;

12 (b) compliance with:

13 (i) the survey requirements provided for in part 4 of this chapter;

14 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

15 (iii) the local subdivision review procedure provided for in this part;

16 (c) the provision of easements within and to the proposed subdivision for the location and installation
17 of any planned utilities; and

18 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
19 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

20 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably
21 minimize potentially significant adverse impacts identified through the review required under subsection (3).

22 The governing body shall issue written findings to justify the reasonable mitigation required under this
23 subsection (4).

24 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under
25 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is
26 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable
27 and will preclude approval of the subdivision.

28 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider

1 and shall give due weight and consideration to the expressed preference of the subdivider.

2 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the
3 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-
4 604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on
5 existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

6 (7) A governing body may not require as a condition of subdivision approval that a property owner
7 waive a right to protest the creation of a special improvement district or a rural improvement district for capital
8 improvement projects that does not identify the specific capital improvements for which protest is being waived.
9 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final
10 subdivision plat is filed with the county clerk and recorder.

11 (8) A governing body may not approve a proposed subdivision if any of the features and
12 improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise
13 provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the
14 proposed subdivision encroaches onto adjoining private property unless the owner of the private property
15 authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided
16 in 76-4-102.

17 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding
18 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of
19 assisting a governing body's review, the comment or opinion may be included in the governing body's written
20 statement under 76-3-620 only if the comment or opinion provides scientific information or a published study
21 that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire
22 or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose
23 that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as
24 provided in this subsection.

25 (10) Findings of fact by the governing body concerning whether the development of the proposed
26 subdivision meets the requirements of this chapter must be based on the record as a whole. The governing
27 body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."
28

1 **Section 8.** Section 76-3-621, MCA, is amended to read:

2 "**76-3-621. Park dedication requirement.** (1) Except as provided in ~~76-3-509~~ or subsections (2), (3),
3 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation
4 equal to:

- 5 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- 6 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and
7 not larger than 1 acre;
- 8 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger
9 than 3 acres; and
- 10 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not
11 larger than 5 acres.

12 (2) When a subdivision is located totally within an area for which density requirements have been
13 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the
14 governing body may establish park dedication requirements based on the community need for parks and the
15 development densities identified in the growth policy or regulations. Park dedication requirements established
16 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per
17 dwelling unit.

- 18 (3) A park dedication may not be required for:
 - 19 (a) land proposed for subdivision into parcels larger than 5 acres;
 - 20 (b) subdivision into parcels that are all nonresidential;
 - 21 (c) a subdivision in which parcels are not created, except when that subdivision provides permanent
22 multiple spaces for recreational camping vehicles, mobile homes, or condominiums;
 - 23 (d) a subdivision in which only one additional parcel is created; or
 - 24 (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described
25 in 76-3-609(2).

26 (4) The governing body, in consultation with the subdivider and the planning board or park board that
27 has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and
28 consideration to the expressed preference of the subdivider, may determine whether the park dedication must

1 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash
2 donation is required, the cash donation may not exceed the proportional amount not covered by the land
3 donation.

4 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall
5 use the dedicated money or land for development, acquisition, or maintenance of parks to serve the
6 subdivision.

7 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its
8 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements
9 only if:

10 (i) the park, recreational area, open space, or conservation easement is within a reasonably close
11 proximity to the proposed subdivision; and

12 (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for
13 use of the money.

14 (c) The governing body may not use more than 50% of the dedicated money for park maintenance.

15 (6) The local governing body shall waive the park dedication requirement if:

16 (a) (i) the preliminary plat provides for a planned unit development or other development with land
17 permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will
18 ultimately reside in the development; and

19 (ii) the area of the land and any improvements set aside for park and recreational purposes equals or
20 exceeds the area of the dedication required under subsection (1);

21 (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical,
22 or natural resources; agricultural interests; or aesthetic values; and

23 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided
24 for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required
25 under subsection (1);

26 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
27 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication
28 required under subsection (1); or

1 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and
2 recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

3 (ii) the area of the land and any improvements set aside for park and recreational uses equals or
4 exceeds the area of dedication required under subsection (1).

5 (7) The local governing body may waive the park dedication requirement if:

6 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical
7 wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

8 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
9 or exceeds the area of the dedication required under subsection (1).

10 (8) (a) A local governing body may, at its discretion, require a park dedication for:

11 (i) a subsequent minor subdivision as described in 76-3-609(3); or

12 (ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

13 (A) the subdivision plat indicates development of condominiums or other multifamily housing;

14 (B) zoning regulations permit condominiums or other multifamily housing; or

15 (C) any of the lots are located within the boundaries of a municipality.

16 (b) A local governing body that chooses to require a park dedication shall specify in regulations the
17 circumstances under which a park dedication will be required.

18 (9) Subject to the approval of the local governing body and acceptance by the school district trustees,
19 a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used
20 for school facilities or buildings.

21 (10) For the purposes of this section:

22 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

23 (b) "dwelling unit" means a residential structure in which a person or persons reside.

24 (11) A land donation under this section may be inside or outside of the subdivision."
25

26 **Section 9.** Section 76-6-103, MCA, is amended to read:

27 **"76-6-103. Purposes.** ~~In accordance with the findings in 76-6-102, the~~ The legislature states that the
28 purposes of this chapter are to:

1 (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to
2 provide for the preservation of native plants or animals, biotic communities, or geological or geographical
3 formations of scientific, aesthetic, or educational interest;

4 (2) provide for the preservation of other significant open-space land anywhere in the state either in
5 perpetuity or for a term of years; and

6 (3) encourage private participation in ~~such a~~ the program by establishing the policy to be utilized in
7 determining the property tax to be levied upon the real property which is subject to the provisions of this
8 chapter."

9

10 **Section 10.** Section 90-1-103, MCA, is amended to read:

11 **"90-1-103. Functions of department of commerce -- community development.** (1) The
12 department of commerce shall:

13 (a) cooperate with and provide technical assistance to county, municipal, state, and regional planning
14 commissions, zoning commissions, parks or recreation boards, community development groups, community
15 action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive,
16 and coordinated development of the communities of the state;

17 (b) assist the governor in coordinating the activities of state agencies that have an impact on solution
18 of community development problems and implementation of community plans;

19 (c) serve as a clearinghouse for information, data, and other materials that may be helpful or
20 necessary to local governments to discharge their responsibilities and provide information on available federal
21 and state financial and technical assistance;

22 (d) carry out continuing studies and analyses of the problems faced by communities within the state
23 and develop those recommendations for administrative or legislative action as appear necessary. In carrying
24 out the studies and analyses and in providing technical assistance to communities, the department shall pay
25 particular attention to the planning and financing of public facilities and to the problems of metropolitan,
26 suburban, and other areas in which economic and population factors are rapidly changing.

27 (e) administer the federal community development block grant program and adopt rules to implement
28 the program.

